

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MARSEL VAN OOSTEN,

Plaintiff,

- against -

L'OREAL USA, INC.

Defendant.

Docket No. 1:17-cv-8883

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Marsel Van Oosten (“Oosten” or “Plaintiff”) by and through his undersigned counsel, as and for his Complaint against Defendant L’Oreal USA, Inc., (“L’Oreal” or “Defendant”) hereby alleges as follows:

NATURE OF THE ACTION

1. This is an action for copyright infringement under Section 501 of the Copyright Act and for the removal and/or alteration of copyright management information under Section 1202(b) of the Digital Millennium Copyright Act. This action arises out of Defendant’s unauthorized reproduction and public display of a copyrighted photograph of an endangered black snub-nosed monkey, owned and registered by Oosten, an award-winning professional photographer. Accordingly, Oosten seeks monetary relief under the Copyright Act of the United States, as amended, 17 U.S.C. § 101 *et seq.*

JURISDICTION AND VENUE

2. This claim arises under the Copyright Act, 17 U.S.C. § 101 *et seq.*, and this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. This Court has personal jurisdiction over Defendant because Defendant resides in and/or transacts business in New York.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

PARTIES

5. Oosten is a professional photographer in the business of licensing his photographs for a fee having a usual place of business at Pieter de Hoochstraat, 19f, ED Amsterdam, 1071, Netherlands. Oosten has won numerous awards and prizes including First Prize in the International Photography Awards (IPA) three times, First Prize in the European Wildlife Photographer of the Year, First Prize in the Nature's Best International Photography Awards, and numerous First Prizes in Nature Photographers Network Awards.

6. Upon information and belief, L'Oreal is a foreign business corporation duly organized and existing under the laws of the State of Delaware, with a place of business at 10 Hudson Yards, 30th Floor, New York, New York 10001. Upon information and belief, L'Oreal is registered with the New York State Department of Corporations to do business in New York At all times material, hereto, L'Oreal's employee, brand ambassador and spokesperson has operated its Instagram Page at the URL: <https://www.instagram.com/p/BP4dog6hZyF/?taken-by=doutzen> to promote L'Oreal's products (the "Website").

STATEMENT OF FACTS

A. Background and Plaintiff's Ownership of the Photograph

7. Oosten photographed an endangered black snub-nosed monkey in China (the "Photograph"). A true and correct copy of the Photograph is attached hereto as Exhibit A.

8. Oosten is the author of the Photograph and has at all times been the sole owner of all right, title and interest in and to the Photograph, including the copyright thereto.

10. The Photograph has a pending United States Copyright Office application number of 1-5981239181.

B. Defendant's Infringing Activities

11. L'Oreal copied the Photograph and placed it on the Website as a way to promote its products. See Exhibit B.

12. L'Oreal did not license the Photograph from Plaintiff for its Website, nor did L'Oreal have Plaintiff's permission or consent to publish the Photograph on its Website.

FIRST CLAIM FOR RELIEF
(COPYRIGHT INFRINGEMENT AGAINST L'OREAL)
(17 U.S.C. §§ 106, 501)

14. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-12 above.

15. L'Oreal infringed Plaintiff's copyright in the Photograph by reproducing and publicly displaying the Photograph on the Website. L'Oreal is not, and has never been, licensed or otherwise authorized to reproduce, publically display, distribute and/or use the Photograph.

16. The acts of Defendant complained of herein constitute infringement of Plaintiff's copyright and exclusive rights under copyright in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

17. Upon information and belief, the foregoing acts of infringement by L'Oreal have been willful, intentional, and purposeful, in disregard of and indifference to Plaintiff's rights.

18. As a direct and proximate cause of the infringement by the Defendant of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to damages and Defendant's profits pursuant to 17 U.S.C. § 504(b) for the infringement.

SECOND CLAIM FOR RELIEF
INTEGRITY OF COPYRIGHT MANAGEMENT INFORMATION AGAINST L'OREAL
(17 U.S.C. § 1202)

22. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-18 above.

23. The Photograph contained a watermark on the Photograph stating “© Marsel Van Oosten” which is considered copyright management information under 17 U.S.C. § 1202(b). See Exhibit A.

24. Upon information and belief, L'Oreal cropped out the watermark and intentionally and knowingly removed copyright management information identifying Plaintiff as the photographer of the Photograph.

25. The conduct of L'Oreal violates 17 U.S.C. § 1202(b).

26. Upon information and belief, L'Oreal's falsification, removal and/or alteration of the aforementioned copyright management information was made without the knowledge or consent of Plaintiff.

27. Upon information and belief, the falsification, alteration and/or removal of said copyright management information was made by L'Oreal intentionally, knowingly and with the intent to induce, enable, facilitate, or conceal their infringement of Plaintiff's copyrights in the Photograph. L'Oreal also knew, or should have known, that such falsification, alteration and/or removal of said copyright management information would induce, enable, facilitate, or conceal their infringement of Plaintiff's copyrights in the Photograph.

28. As a result of the wrongful conduct of L'Oreal as alleged herein, Plaintiff is entitled to recover from L'Oreal the damages, that he sustained and will sustain, and any gains,

profits and advantages obtained by L'Oreal because of their violations of 17 U.S.C. § 1202, including attorney's fees and costs.

29. Alternatively, Plaintiff may elect to recover from L'Oreal statutory damages pursuant to 17 U.S.C. § 1203(c) (3) in a sum of at least \$2,500 up to \$25,000 for each violation of 17 U.S.C. § 1202.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That Defendant L'Oreal be adjudged to have infringed upon Plaintiff's copyrights in the Photograph in violation of 17 U.S.C §§ 106 and 501;
2. The Defendant L'Oreal be adjudged to have falsified, removed and/or altered copyright management information in violation of 17 U.S.C. § 1202.
3. Plaintiff be awarded Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's infringement of Plaintiff's Photograph;
4. That, with regard to the Second Claim for Relief, Plaintiff be awarded either:
 - a) Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's falsification, removal and/or alteration of copyright management information; or b) alternatively, statutory damages of at least \$2,500 and up to \$ 25,000 for each instance of false copyright management information and/or removal or alteration of copyright management information committed by Defendant pursuant to 17 U.S.C. § 1203(c);
5. That Defendant be required to account for all profits, income, receipts, or other benefits derived by Defendant as a result of its unlawful conduct;

6. That Plaintiff be awarded his costs, expenses and attorneys' fees pursuant to 17 U.S.C. § 1203(b);
7. That Plaintiff be awarded pre-judgment interest; and
8. Such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable in accordance with Federal Rule of Civil Procedure 38(b).

Dated: Valley Stream, New York
November 15, 2017

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